

BC FINANCIAL SERVICES AUTHORITY

**IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
SBC 2004, c 42 as amended**

AND

IN THE MATTER OF

**[APPLICANT 3]
([Licence # Redacted])**

**REASONS FOR DECISION REGARDING
ADMINISTRATIVE PENALTY RECONSIDERATION REQUEST**

[This Decision has been redacted before publication.]

DATE AND PLACE OF HEARING: Via Written Submissions

HEARING OFFICER: Gareth Reeves

Introduction

1. On August 2, 2024, the BC Financial Services Authority ("**BCFSA**") issued a Notice of Administrative Penalty (the "**NOAP**") in the amount of \$2,000 to [Applicant 3] pursuant to section 57(1) and 57(3) of the *Real Estate Services Act*, RSBC 2004, c 42 ("**RESA**").
2. In the NOAP, BCFSA determined that [Applicant 3] had contravened sections 40(2) and 41 of the *Real Estate Services Rules*, BC Reg 209/2021 (the "**Rules**") by failing to identify his brokerage on his Facebook page and advertising unregistered team names on Facebook, Instagram, and YouTube.
3. [Applicant 3] applied for a reconsideration of the NOAP under section 57(4) of RESA. The application proceeded by written submissions.

Issues

4. The issue before me is whether the August 2, 2024 NOAP should be cancelled or confirmed.

Jurisdiction and Standard of Proof

5. This is an administrative penalty reconsideration application under section 57(4) of RESA, which requires the Superintendent of Real Estate (the "**superintendent**") to provide a person who receives an administrative penalty with an opportunity to be heard upon request.
6. Section 57(4) of RESA permits the superintendent to cancel the administrative penalty, confirm the administrative penalty, or, if the superintendent is satisfied that a discipline hearing under section 40 of RESA would be more appropriate, cancel the administrative penalty and issue a notice of discipline hearing.
7. The superintendent has delegated the statutory powers and duties set out in section 57 to BCFSA's Hearing Officers.

8. The standard of proof is the balance of probabilities.

Background

9. The evidence and information before me consists of an investigation report completed by BCFSA along with the tabs to that report and the information provided by [Applicant 3] in his submission on the reconsideration. The investigation report involved several real estate licensees and I was provided only the tabs relevant to [Applicant 3]'s conduct. The following is intended to provide some background to the circumstances and to provide context for my reasons. It is not intended to be a recitation of all of the information before me.
10. [Applicant 3] was first licensed as a representative in the trading category on January 18, 2024 with [Brokerage 1] and was licensed there at all relevant times. Between his registration date and until at least June 7, 2023, [Applicant 3] was not a member of a team registered under the Rules.
11. [Applicant 3] is the son of another licensee, [Licensee 1]. He advised BCFSA investigations that he works for [Licensee 1] for a monthly salary and works on advertising and social media work for [Licensee 1] and other individuals who work with [Licensee 1].
12. Between June 16, 2023 and May 19, 2024, BCFSA received six anonymous complaints regarding [Licensee 1]'s advertising and working as a team with other real estate licensees despite not being a member of a registered team; some of the complaints referred to [Applicant 3] directly. As a result, BCFSA investigated those licensees' advertising activities.
13. On May 8 and 9, 2024, BCFSA Investigations found the following by performing online searches:
 - a. [Applicant 3]'s Facebook page at [https://www.facebook.com/\[redacted\]](https://www.facebook.com/[redacted]) showed the name "[Applicant 3]", a profile photo stating "[Licensee 1] Homes" and a banner stating "[Licensee 1] Homes | Real Estate". [Applicant 3]'s brokerage's name is not indicated on the page.
 - b. On January 30, 2024, [Applicant 3] posted a reel to his Facebook page including "[Licensee 1] Realty Group" with a green checkmark next to it in the reel's description. The reel shows [Applicant 3] offering an opportunity in a presale development. The reel does not identify [Applicant 3]'s brokerage.
 - c. The bio on [Applicant 3]'s Instagram page at [https://www.instagram.com/\[Applicant 3\]realestate](https://www.instagram.com/[Applicant 3]realestate) listed "[Licensee 1] Realty Group" below the "[Brokerage 2]" and the username for the page was "[Applicant 3]realestate".
 - d. The YouTube channel at [https://youtube.com@\[Licensee 1\]realty](https://youtube.com@[Licensee 1]realty) (the "**Channel**") showed a banner with [Applicant 3]'s image along with other licensees overlaid over a panoramic photograph and the words "[Licensee 1] Realty Group"¹. The page has the name "[Licensee 1] Realty Group" and has a profile picture stating "[Licensee 1] Realty Group".
 - e. The Channel posted a video on January 27, 2024 prominently featuring the text "[Licensee 1] Realty Group". The video includes various licensees and includes [Applicant 3] introducing himself as being "with [Licensee 1] Realty Group". A translation of the Korean description of that video indicates that it refers to "[Licensee 1] Realty Group". As at the date of the screenshot provided to me, the video had 32,236 views.
 - f. The Channel posted a video on February 1, 2024 with "[Licensee 1] Realty Group" in the title. The video shows [Applicant 3] inside a property and has a watermark stating the

¹ I note that the text "Realty Group" is covered by an image of a licensee, but the context indicates that the words are "Realty Group".

property's address and stating "LISTED BY [LICENSEE 1]". The video's description mentions the property being "listed by [Licensee 1] Realty Group", mentions "[Licensee 1] Realty Group" two other times, and references "[Brokerage 2]", which is not [Applicant 3]'s brokerage. As at the date of the screenshot provided to me, the video had 465 views.

- g. The Channel posted a video on February 4, 2024 with a description including "[Licensee 1] Realty Group". As at the date of the screenshot provided to me, the video had 19,416 views.

14. [Licensee 1] Realty Group was first registered as a team on June 4, 2024.

Submissions

- 15. [Applicant 3] provided submissions dated August 27, 2024. In that submission, he states that his posts, stories, and photos on Facebook all have shown his brokerage's name and logo except in the "bio" portion. He states that the Facebook page in question was "barely active, with minimal posts and interactions, and was inactive for several months". He says any omission to identify his brokerage was unintentional. He notes the account's password was "unrecovered for some time" but does not indicate when this occurred. He indicates the account was "incomplete."
- 16. Regarding the use of a team name, [Applicant 3] submits that he used these accounts to share content from a "series of educational and informational sessions aimed at the community, rather than as formal representations of unregistered team entities." He says the names were meant as "temporary project titles" and not "official team names."
- 17. He also notes that he has taken steps to prevent reoccurrence, but does not state what those steps were. He highlights that he was, and remains, a relatively junior licensee.

Reasons and Findings

Applicable Legislation

- 18. Section 56 of RESA provides that BCFSA may designate specific provisions of RESA, the *Real Estate Regulation*, BC Reg 506, 2004 (the "**Regulations**"), or the Rules as being subject to administrative penalties, and may establish the amounts or range of amounts of administrative penalty that may be imposed in respect of each contravention of a specified provision. Pursuant to section 56(2), the maximum amount of an administrative penalty is \$100,000.
- 19. Section 26(1) of the Rules indicates that for the purposes of section 56(1) of RESA, contraventions of the Rules listed in section 26(2) are designated contraventions to which Division 5 (Administrative Penalties), Part 4 of RESA, applies.
- 20. At the time at issue, section 26(2) of the Rules identified four categories, Category A, B, C, and D, for designated contraventions for the purpose of determining the amount of an administrative penalty. Sections 40 and 41 of the Rules were placed in Category D. Section 27(4) of the Rules provided that Category D contraventions would attract a \$1,000 base penalty for a first contravention, plus an additional \$250 per day, or part of a day, that the contravention continues.
- 21. Section 57(1) of RESA sets out that if the superintendent is satisfied that a person has contravened a provision of RESA, the Regulations, or the Rules designated under section 56(1)(a) of RESA, the superintendent may issue a notice imposing an administrative penalty on the person. Section 57(2) requires that a notice of administrative penalty indicate the section that has been contravened, indicate the administrative penalty that is imposed, and advise the person of the person's right to be heard respecting the matter.

22. Sections 40 and 41 of the Rules provide as follows:

- 40** (1) A licensee must not publish real estate advertising unless the advertising complies with this section.
- (2) In all cases, the licensee name of the brokerage must be displayed in a prominent and easily readable way.
- ...
- 41** A licensee must not publish real estate advertising that the licensee knows, or reasonably ought to know, contains a false or misleading statement or misrepresentation concerning real estate, a trade in real estate or the provision of real estate services.

Analysis

23. Imposing an administrative penalty under section 57 of RESA is a discretionary decision. A request to reconsider the imposition of an administrative penalty requires a Hearing Officer to consider not only whether a contravention of RESA, the Regulations, or the Rules has occurred, but also whether a licensee exercised due diligence, that is: took reasonable steps or precautions, to prevent the contravention of the designated sections identified in the notice of administrative penalty. A Hearing Officer may also consider information on any extenuating circumstances that prevented compliance, or any other information the licensee believes a Hearing Officer should consider.

Contravention, section 40(2)

24. Section 40(2) of the Rules requires licensees to display their brokerage's name in a prominent and easily readable way in all advertising they publish.
25. [Applicant 3]'s Facebook page did not feature the name of his brokerage. It did however include references to "[Licensee 1] Homes" in both the profile picture and the banner and featured at least one reel in which [Applicant 3] presents opportunities to purchase in a presale development. These features directly tie the page to [Applicant 3]'s activities as a licensee. In my view, [Applicant 3] was using his Facebook page to promote his services as a real estate licensee and hold himself out as a real estate licensee, and was therefore subject to the advertising rules set out in section 40 of the Rules.
26. [Applicant 3] says his posts, stories and photos "consistently featured the brokerage's name and logo" but it did not appear in the bio portion. The evidence before me indicates that this claim is incorrect. In particular the January 30, 2024 reel posted to [Applicant 3]'s Facebook page did not feature his brokerage name at all. I also note that his Instagram page incorrectly listed "[Brokerage 2]", which was not [Applicant 3]'s brokerage at the time. I note that the NOAP only references his Facebook page regarding the failure to display his brokerage name, but I take the information posted on his Instagram to confirm that he did not indicate his brokerage name on his own social media profiles.
27. The screenshots provided by BCFSIA Investigations were taken on May 8 and 9, 2024. Further, the screenshot of the January 30, 2024 Facebook reel shows [Applicant 3]'s profile picture was the same "[Licensee 1] Homes" picture shown in the screenshot of his profile picture and banner. Therefore, I am satisfied that [Applicant 3]'s Facebook page was as described above after he became licensed on January 18, 2024 and until at least May 8, 2024.
28. Therefore, [Applicant 3]'s Facebook page failed to display his brokerage name in a prominent and easily readable way while he was licensed as required by section 40(2) of the Rules. I will address the issue of whether [Applicant 3] has established he exercised due diligence in this regard below.

Contravention, section 41

29. Real estate licensees are required to refrain from publishing advertising that they know, or reasonably ought to know, contain false or misleading information or statements concerning the provision of real estate services. Publishing, within the meaning of the Rules, includes both causing and permitting something to be published.
30. Trading services real estate teams and the advertising rules around them have been in place for some time. Teams operate within a brokerage and have been used by licensees to indicate to potential clients that they will benefit from the skills, experience, and work of the team when they engage that team. The licensees represent to the public that they work together to represent clients and can thereby more effectively market and sell real estate.
31. Effective April 1, 2023, the Rules were amended to include sections 42.1 to 42.4, which govern the operation of real estate teams. These rules require licensees to register as a team in certain circumstances including where the licensees “represent themselves to the public as a single entity”: Rules, s 42.2(1)(a). Licensees cannot provide real estate services through a team unless they are registered to that team. If they are registered to a team, they can only provide real estate services through that team and become designated agents of all the team’s clients. In addition, sections 40(5) and (6) and 42.4(6) of the Rules require that advertising by a real estate team identify the team’s name.
32. As indicated above, I find that [Applicant 3] used his Facebook page to advertise his real estate services.
33. [Applicant 3]’s Instagram page includes “realestate” in the URL and in the username for that page. It also, during the investigation of this matter, indicated “[Brokerage 2]” and “[Licensee 1] Realty Group” along with a link to “[Licensee 1]homes.com”. I find that, taken together, this indicates that [Applicant 3] used his Instagram page to advertise his real estate services.
34. Regarding the Channel, [Applicant 3] has indicated in his response to BCFSA’s investigation that he worked on advertising and social media for [Licensee 1] and other licensees that worked with her. The Channel’s main page includes a banner featuring various licensees, including [Applicant 3], and various real estate focused shorts and videos including the January 27, February 1, and February 4, 2024 videos discussed above. The February 1, 2024 video directly advertises a specific property. The main page and the three video pages feature the phrase “[Licensee 1] Realty Group” and the February 1, 2024 video specifically states the property is “listed by [Licensee 1] Realty Group”. I find that the Channel advertised the featured licensees’ real estate services. This includes [Applicant 3].
35. All of these videos remained posted until at least May 8, 2024.
36. As real estate advertising, the Facebook and Instagram pages and the Channel were therefore required to not provide false or misleading information or misrepresentations concerning the provision of real estate services.
37. In my view, at the relevant time, advertising that presents licensees as working together and that presents them as members of a “group” would indicate that the licensees were part of a team and would give the public the impression that, if they engaged the licensees they would obtain the benefit of representation by the team. The public may not necessarily know the details of real estate team registration, but I find that representing that individual licensees work together as a “group” would suggest that they would represent clients together and be appropriately registered as such.
38. I find that the various references to “[Licensee 1] Homes” and “[Licensee 1] Realty Group” on [Applicant 3]’s social media pages and on the Channel represented that [Applicant 3], along with

the featured licensees, were working together under the name “[Licensee 1] Realty Group” as a single entity. I note that [Applicant 3]’s Facebook page correlated “[Licensee 1] Homes” and “[Licensee 1] Realty Group” through the January 30, 2024 reel. Contrary to this representation, [Applicant 3] was not a member of any registered team at the time.

39. I find that [Applicant 3] was directly involved in these representations. His Facebook and Instagram pages are his own, and he advised BCFS Investigations that he was responsible for advertising and social media for [Licensee 1].
40. I find that [Applicant 3] caused the material to be published on the Channel as part of his work in advertising and social media for [Licensee 1]. Further, [Applicant 3] is featured in the January 27 and February 1, 2024 videos and on the main page of the Channel, which, in my view, required his participation in a way that would constitute him permitting the publication of this material.
41. I note that prior decisions under RESA have found that advertising oneself as a member of a team when one is not, constitutes false or misleading advertising: *Singh (Re)*, 2019 CanLII 7893 (BC REC). This is also reflected in BCFS’s Advertising Guidelines published May 4, 2021.
42. [Applicant 3] submits that the material was related to “educational and informational sessions” aimed at the community and not to formally represent licensees as “unregistered team entities”, and that the names were used as “temporary project titles”. In my view, these explanations do not defeat a conclusion that the representations were made in advertising or that they gave the impression that [Applicant 3] was part of a team called “[Licensee 1] Realty Group”, even assuming these explanations are true regarding all the posts. Licensees are expected to comply with the Rules when providing education or information to the public regarding real estate or real estate services. Assuming these explanations are true, the material was still real estate advertising. The nature, form, and content all suggest that it was intended to promote the licensees’ real estate services. It also still gave the impression that [Applicant 3] was part of a team called “[Licensee 1] Realty Group”.
43. Therefore, I find that [Applicant 3], through his personal Facebook and Instagram pages and through the Channel, published real estate advertising that contained false or misleading representations concerning his provision of real estate services and in particular, his status as a member of a real estate team.
44. The issue of due diligence is addressed below.

Due Diligence

45. [Applicant 3]’s submissions raise various issues regarding his Facebook page including that his Facebook account was barely active or was inactive, that his failure to include his brokerage name was unintentional, and his password was “unrecovered” for a period of time.
46. In my view, none of these submissions raise a reasonable due diligence defence. The Facebook page was [Applicant 3]’s and he does not dispute that he set it up. His failure to include all the relevant and required information when setting it up is a failure to comply with his obligations as a licensee. Regardless of intention, he was required to know the relevant rules and comply with them. Further, if he was unable to access the page while recovering his password, that might be relevant if daily penalties were issued, but [Applicant 3] was required to exercise due care in setting up the page.
47. I also note that BCFS’s Advertising Guidelines published May 4, 2021 state that licensees “must include the name of [their] related brokerage on [their] profile screen.” This guidance was available to [Applicant 3] when he was setting up his Facebook page.

48. Further, [Applicant 3]'s statement that the Facebook account was barely active or inactive is not particularly illuminating or relevant. Although social media posts of certain types can indicate how many times they were viewed, for example YouTube videos, that is not always the case. We do not know how many people viewed [Applicant 3]'s Facebook page during the period at issue, just like we would be unable to determine how many people read a bus stop ad. In any event, the question of the degree of publicity an advertisement attracted might factor into determining the appropriate sanction but does not speak to the contravention itself. In the context of determining whether a contravention occurred, the question is whether publication occurred and not the scope of publication.
49. Regarding the use of "[Licensee 1] Realty Group", I find that [Applicant 3] has not raised any argument that he exercised due diligence. He used that phrase repeatedly at a time when he was not a member of a registered team. He had no reason to believe he was a member of a registered team at that time. BCFSA has published guidance on real estate teams on its website under Teams Information, published January 31, 2023 and in the Advertising Guidelines published May 4, 2021. This information was available to [Applicant 3] when he was making or involved in the posts. Even if the posts were informational or educational, they were connected to and promoted his role as a real estate licensee and therefore were required to comply with the advertising rules.
50. I do not find that [Applicant 3] exercised due diligence when he failed to display his brokerage name on his Facebook page. I do not find that he exercised due diligence when he published the representations regarding the "[Licensee 1] Realty Group" on Facebook, Instagram, or YouTube.

Penalty Amount

51. The penalty amounts indicated by the NOAP are the base penalty amounts for first contraventions of sections 40(2) and 41 of the Rules, which is \$1,000 each. Although [Applicant 3] has indicated his Facebook account was barely active or was inactive, he was clearly advertising real estate services on that page and therefore should have ensured it complied with the requirements of the Rules. I do not find that the penalty is inappropriate based on the extent of publication. Similarly the penalty for the false representations on Facebook, Instagram, and YouTube is the minimum prescribed penalty for a first contravention of section 41 of the Rules. The contravention of that Rule was repeated and ongoing. I find that the penalty amount for that contravention is appropriate. That conduct could have warranted a larger penalty had the matter been pursued through multiple administrative penalties or through a Notice of Discipline Hearing.
52. As a result of my findings above, the base penalties were appropriate and I confirm them.

Conclusion

53. I find that [Applicant 3] contravened section 40(2) and 41 of the Rules by failing to identify his brokerage's name on his Facebook profile page and by representing that [Applicant 3] was a member of an unlicensed real estate team, "[Licensee 1] Realty Group". I confirm the \$2,000 administrative penalty issued on August 2, 2024.
54. The administrative penalty is now due and payable to BCFSA.

DATED at North Vancouver, BRITISH COLUMBIA, this 25th day of October, 2024.

"Original signed by Gareth Reeves"

Gareth Reeves
Hearing Officer